

**IN THE HIGH COURT OF HIMACHAL PRADESH**  
**SHIMLA:**

Cr.A.No.389 of 2000

Reserved on:13<sup>th</sup> September, 2007.

Date of Decision : 13<sup>th</sup> November, 2007

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State of H.P.

...Appellant.

Versus:

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Sat Pal

...Respondent.

Coram:

**The Hon'ble Mr.Justice Sanjay Karol, Judge.**

Whether approved for reporting?<sup>1</sup>

For the appellant:

Mr.Ashok Chaudhary, Addl.Advocate  
General.

For Respondent.

Mr.Rahul Mahajan, Advocate.

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**Sanjay Karol, J.**

The present appeal arises out of the judgment dated 30<sup>th</sup> December, 1999 passed by Additional Chief Judicial Magistrate, Kandaghat, District Solan in Criminal Case No.8/2 of 1998 titled as State of H.P. Vs. Sat Pal acquitting the accused of the charged offence under Sections 279 and 337 of the Indian Penal Code and Section 179 of the Motor Vehicles Act.

As per the case of the prosecution on 14<sup>th</sup> September, 1997 at about 7.10 P.M. Mohinder Singh (PW-1) was driving car bearing No.HP-03-1782, belonging to the National Cadet Core (headquarter Shimla), from Sadhupul to Chail, H.P. where the N.C.C.

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<sup>1</sup> Whether reporters of Local Papers may be allowed to see the judgment?

camp was being held. In the car Brigadier D.K.Khana and Colonel M.K.Chauhan were traveling with him. When the car reached at the place near Mohag Garden a bus bearing No.HP.15-2542 driven by the accused at great speed came on the wrong side from the opposite direction and on seeing the same PW-1 stopped his car. However, as the bus was at great speed and on the wrong side due to the rash and negligent driving of the accused the bus collided with the car as a result of which the occupants of the car were hurt and sustained injuries. After the accident the driver of the bus immediately ran away from the place of occurrence. Statement of PW-1 under Section 154 Cr.P.C. (Ext.PW-1/A) was recorded on the basis of which F.I.R.No. 75/97 (Ext.PW-11/A) was registered with Police Station, Kandaghat under Sections 279 and 337 I.P.C and Section 179 of the Motor Vehicles Act. The matter was investigated and the injured were got medically examined. Both the vehicles were impounded and were mechanically examined and the reports are (Ext.PW-8/A) and (Ext.PW-8/B). The injured were also medically examined and Dr.O.P Chaudhary (PW-9) examined the complainant and his M.L.C. is (Ext.PW-9/A).

After completing the investigation the challan was presented in the court for trial and the charges against the accused under Sections 279 and 337 I.P.C. and Section 179 of the Motor Vehicles Act were framed. The accused pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined 11 witnesses and the statement of the accused under Section 313 Cr.P.C. was also recorded. The defence taken by the accused is that the

prosecution has examined interested witnesses. Based on the material on record, the court below acquitted the accused of the charged offence.

The learned counsel for the appellant has argued that the reasoning given by the court below is totally perverse and is based on incorrect and improper appreciation of the evidence. While arriving at its conclusion, the court has wrongly held that the accused, who was driving the bus was not identified by the witnesses and that it has wrongly held that other than the photographs mark-A there is no evidence on record show that the accused was driving the vehicle rashly and negligently. The finding that it was not possible for brigadier D.K.Khanna to see the bus coming from the opposite side is perverse and factually incorrect.

Having heard the learned counsel for the parties, I am of the considered view that the appreciation of the material by the Court below is perverse.

Mohinder Singh (PW-1) has deposed that he was driving the vehicle and was taking Brigadier D.K.Khanna (PW-4) and Col. M.K.Chauhan (PW-2) to Chail. When he reached a place near Mohag Garden he saw a bus coming from an opposite direction at a fast speed. He immediately applied his brake and the vehicle stopped but, however, the bus hit his vehicle with such an impact that it pushed the car behind up to 5-6 feet. His statement (Ext.PW-1/A) was recorded and the offending vehicle was impounded vide seizure memo (Ext.PW-1/B) The driver of the bus, the accused, ran away from the spot immediately after the accident, was identified by him. The Manager of the Company owning the bus came at the site and in his presence the

vehicle was taken into possession vide seizure memo (Ext.PW-1/C). He suffered injury and was given treatment at the hospital at Chail and the other passengers who also suffered injuries were taken to Military Hospital, Shimla for treatment. According to him the accident occurred due to over speeding and the vehicle being driven by the accused on the wrong side. This witness has been cross-examined at length. But, however, there is nothing which would impeach the credibility of this witness or make his statement false, unreliable or not trustworthy. He has denied the suggestion that he was driving the vehicle in a heavy gear and at a high speed. He has denied the suggestion that the accident did not take place due to the fault of the accused. He has denied the suggestion that the vehicle was not being driven by the accused. He has denied the suggestion put to him that the driver had run away from the spot as the witnesses had got down to beat him.

As per the version of PW-2 he was traveling along with Brigadier D.K.Khanna to attend the camp at Chail. He was sitting on the front seat of the car and the other occupants were sitting on the rear seat. At a place known as Mohag Garden the bus came from the opposite side on the curve. The visibility was clear and the bus was being driven at a very high speed. According to him, PW-1 steered his car to the left side and stopped the same. Suddenly the bus turned to the right side of its driver and hit the car on its left side. The car was pushed back about 6 meters. As a result of the accident he sustained injuries on his head, nose, neck, upper portion of spine and right knee. He was bleeding profusely. This witness, however, could not see the accused as he ran away from the scene of occurrence. He was taken to medical treatment and was treated by the doctor at the State

Hospital, Shimla. According to him Mrs. Khanna wife of PW-4 also sustained minor injuries on the forehead. He has deposed that there was a bottle of liquor and the whole bus smelled of the same. The accident took place due to the negligence of the bus driver as he was on the wrong side and in high speed. In the cross-examination it has come on record that the speed of the car was not more than 15 to 20 Kms. per hour and that is why it immediately become stationary. He has stated that the accident took place at about 7 P.M. He has seen the photographs mark-A.

H.C. Kamal Nain (PW-3) has proved Ext.PW-1/C and has stated that he took PW-1 to the hospital.

Brig.D.K.Khanna (PW-4) has corroborated the statement of PW-2 and has stated that the bus was being driven on the wrong side of the road. He has further stated that the accident took place due to rash and negligent driving on the part of the bus driver due to which injuries were sustained by PW-1 and PW-2. He has stated that he got down from the vehicle and the driver of the bus ran away from the scene of occurrence immediately after the accident. He has admitted that he was sitting on the left side of the vehicle behind Col. M.K.Chauhan and his wife was sitting besides him. He has denied the suggestion that while sitting on the rear seat he could not see anything in the front. According to him the vehicle was being driven in second or third gear and there was a blind curve at the place of the accident. This witness, however, has stated that from the place where the car was stationed in the photographs mark-A, the bus could not be seen from the opposite direction. He has denied the suggestion that the accident did not take place due to rash and negligent driving on the part of the

accused or that the accident took place due to the fault of PW-1.

Bharat Hussan (PW-5) and Laxmi Dutt Sharma (PW-6) are the official witnesses who have mechanically examined both the vehicles. Dr.O.P. Chaudhary (PW-9) has stated that PW-1 suffered the following injuries and he had issued M.L.C. (Ext.PW-1/A):

“1. There was one lacerated wound on the right knee joint of right leg measuring 1 ½ x1 ½ c.m.x superficial.

2.One lacerated wound on the left eyebrow of left eye. Size 2cmx ¼ cm x skin-deep. No any sign of fracture on any part of the body.”

Col. M.K.Chauhan (PW-2) has suffered the following injuries which are clear from Ext.PX:

- 1.Two deep lacerated wounds on the R knee.
- 2.Tenderness in the cervical spine area with restricted movements.
3. Blurring of vision in the R eye with sub conjutival hemorrhage at the lateral angle of same eye.
4. Multiple skin lesions (abrasions with under lying contusion) R side of chest.
5. Three lacerated wounds on the lateral aspect of R forearm in the middle area.
6. Bleeding from post nasopharyngeal area.
7. Tenderness in the left Glottal region.

In ***Rathnashalvan vs. State of Karnataka***, (2007) 3 Supreme Court Cases 474 and ***Prabhakaran v. State of Kerala***, AIR 2007 Supreme Court 2376, the apex Court has considered what rashness and negligence would mean in the context of criminal culpability:-

"5. Section 304 A speaks of causing death by negligence. This section applies to rash and negligent acts and does not apply to cases where death has been voluntarily caused. This section obviously does not apply to cases where there is an intention to cause death or knowledge that the act will in all probability cause death. It only applies to cases in which without any such intention or knowledge death is caused by what is described as a rash and negligent act. A negligent act is an act done without doing something which a reasonable man guided upon those considerations which ordinarily regulate the conduct of human affairs would do or act which a prudent or reasonable man would not do in the circumstances attending it. A rash act is a negligent act done precipitately. Negligence is the genus, of which rashness is the species. It has sometimes been observed that in rashness the action is done precipitately that the mischievous or illegal consequences may fall, but with a hope that they will not..."

"6. Section 304-A applies to cases where there is no intention to cause death and no knowledge that the act done in all probability will cause death. The provision is directed at offences outside the range of Sections 299 and 300 IPC. The provision applies only to such acts which are rash and negligent and are directly cause of death of another person. Negligence and rashness are essential elements under Section 304-A. Culpable negligence lies in the failure to exercise reasonable and proper care and the extent of its reasonableness will always depend upon the circumstances of each case. Rashness means doing an act with the consciousness of a risk that evil consequences will follow but with the hope that it will not. Negligence is a breach of duty imposed by law. In criminal cases, the amount and degree of negligence are determining factors. A question whether the accused's conduct amounted to culpable rashness or negligence depends directly on the question as to what is the amount of care and circumspection which a prudent and reasonable man would consider to be sufficient considering all the circumstances of the case. Criminal rashness means hazarding a dangerous or wanton act with the knowledge that it is dangerous or wanton and the further knowledge that it may cause injury but done without any intention to cause injury or knowledge that it would probably be caused.

7. As noted above, "Rashness" consists in hazarding a dangerous or wanton act with the knowledge that it is so and that it may cause injury. The criminality lies in such a case in running the risk of doing such an act with recklessness or indifference as to the

consequences. Criminal negligence on the other hand, is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular, which, having regard to all the circumstances out of which the charge has arisen it was the imperative duty of the accused person to have adopted."

(Emphasis supplied)

Now from the material on record, it cannot be said that the accused had not been identified by the witnesses. PW-1 has categorically stated that it was the accused who was driving the vehicle at the time of the occurrence of the incident. His cross-examination, in fact, would show that the presence of the accused is not disputed. A suggestion has been put to him that the accused ran away from the spot as the witnesses had got down from the car to beat him. The conduct of the accused is unexplainable. The fact that the accident took place between the two vehicles is also not disputed. There is no cross-examination to that effect. The fact that the passengers suffered injuries due to the accident also stands proved through the deposition of PW-1, PW-2 and PW-4. The injury has been proved by PW-9. All the eye witnesses have specifically denied the suggestion that it was the car which was being driven at the high speed. PW-1 has deposed that the vehicle was in the second/third gear and was going uphill. All the spot witnesses have deposed that the offending vehicle, being driven by the accused on the wrong side came from the opposite direction at a high speed which caused the occurrence of the accident. They have also deposed that the accused was driving the vehicle in a rash and negligent manner.

Mark-A the photographs itself, would show that the road is quite wide and two vehicles can cross simultaneously. It is a double

lane road, the car being driven up hill is on its lane, i.e. the left side of the road and the bus being driven by the accused down hill from the opposite direction is on the wrong side and is just opposite to the car. This position is quite evident from the site plan placed on record. The width of the road is 18 feet and both the vehicles were on the extreme left side of the road and the distance between the vehicles and the remaining portion of the road, to the right side is approximately 9 feet. Obviously the road was not narrow so as to make it difficult for both the vehicles to pass each other simultaneously. The bus was being driven to the extreme left side of the road was on the wrong side.

In my view the prosecution has been able to prove the guilt of the accused in the commission of the offence. A perusal of the material on record would show that the accused was driving the vehicle on the wrong side and there was enough space for crossing the vehicle at the relevant place.

In the present case, there is no reason as to why the witnesses who are the responsible officers would depose against the accused. The site was visible, the weather was clear, therefore, it was expected of the driver not to drive the vehicle in a rash and negligent manner so as to endanger human life. The recklessness and indifference as to the consequences are writ large in the present case, which would only show the gross culpable neglect and failure to exercise reasonable and proper care and precaution to guard the passengers against an injury.

The accused has not raised any defence of the mechanical failure of the vehicle in question. The version of all the prosecution witnesses stands corroborated by the other documentary

evidence on record. There is nothing in their cross-examination which would impeach the credibility of the witnesses. The guilt of the accused is writ large as it has been proved that the accused ran away from the spot immediately after the occurrence of the incident. The statements of PW-1, PW-2, PW-4 and PW-5 sufficiently prove the guilt of the accused beyond reasonable doubt, leading to no other hypothesis except to the guilt of the accused. The appreciation of the evidence by the Court below, therefore, in my view is contrary to law, perverse and resulting into miscarriage of justice. Therefore, there is enough material on record to prove the guilt of the accused to have rashly and negligently driven the vehicle in a manner so as to endanger human life, personal safety and cause injury on the complainant and other occupants of the car.

In this view of the matter, the prosecution has been able to prove the guilt of the accused in the commission of the offence and the accused is held guilty for the charged offences under Section 279 and 337 IPC.

With regard to the charge for an offence under Section 179 of the Motor Vehicle Act, there is nothing on record to prove the guilt of the accused and the accused is acquitted of the said charge. The finding of the Court below is not disturbed to that extent.

The appeal is allowed and the impugned judgement dated 30<sup>th</sup> December, 1999 is set aside.

**November 13, 2007**  
(r/tm)

**(Sanjay Karol),**  
**Judge.**